

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD A. LENNSTROM,

Plaintiff,

v.

AUBURN COMMUNITY HEALTH  
CENTER, *et al.*,

Defendants.

CASE NO. C05-1788RSM

ORDER GRANTING DEFENDANT  
SAFEWAY PHARMACY'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on defendant Safeway Pharmacy's Motion for Summary Judgment.<sup>1</sup> (Dkt. #5). On September 28, 2005, plaintiff filed the instant lawsuit in King County Superior Court, apparently attempting to raise claims under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and alleging that defendant Safeway Pharmacy,

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<sup>1</sup> While plaintiff has named three other defendants – Auburn Community Health Center, Ms. Suzanne Laurel, D.O., and Ms. Debby Roberts – he has failed to provide any proof of service of the summons and complaint on these defendants. In its Motion for Summary Judgment, Safeway Pharmacy alerts plaintiff that the Pharmacy is the only defendant that has appeared in the case, and that it also appears to be the only defendant ever served, albeit improperly. Even having been so informed, plaintiff failed to provide any proof of service of the summons and complaint on the other defendants in his response. Accordingly, the Court finds that plaintiff has failed to prosecute his case against Auburn Community Health Center, Ms. Suzanne Laurel, D.O., and Ms. Debby Roberts.

1 along with plaintiff's treating physicians and health care center, caused \$1,750,000.00 of damage  
2 when they failed to refill his prescriptions for a narcotic pain killer called Narco, and for  
3 diazepam, which is commonly know as Valium. (Dkt. #1, Ex. A).

4 Defendant Safeway Pharmacy removed the action to this Court shortly thereafter, and  
5 followed with the instant motion for summary judgment. Defendant asserts that plaintiff has  
6 failed to support any cause of action for medical negligence or civil rights violations against it.  
7 (Dkt. #5).

8 While plaintiff did file a response to the motion for summary judgment, he completely  
9 failed to oppose any of defendant Safeway Pharmacy's legal arguments or authority. Instead,  
10 plaintiff chose not to respond to what he calls "the Defendant(s) misrepresentations to the  
11 Court," and takes issue with only two sentences of the Safeway pharmacist's supporting  
12 declaration to the motion for summary judgment. At the same time, by way of a "Request for  
13 Accomodation [sic]," attached to the declaration of Michael A. Chiofar, a.k.a Bear, a.k.a.  
14 Gummo, plaintiff appears to request court-appointed counsel.

15 Having reviewed defendant Safeway Pharmacy's Motion for Summary Judgment, and  
16 the remainder of the record, the Court does hereby find and ORDER:

17 (1) In so far as plaintiff's "Request for Accomodation [sic]" has been construed as a  
18 request for court-appointed counsel (Dkt. #8 at 2), that request is DENIED. Plaintiff apparently  
19 believes that the Americans with Disabilities Act mandates that this Court provide him with free  
20 counsel. However, that Act provides no such right. Moreover, because this Court has  
21 determined that summary judgment in favor of defendant is appropriate, as further explained  
22 below, plaintiff's request for counsel is moot, and his alternative request for a stay of  
23 proceedings is not warranted.

24 (2) Defendant Safeway Pharmacy's Motion for Summary Judgment (Dkt. #5) is  
25 GRANTED, and plaintiff's claims against it are hereby DISMISSED. Defendant argues that  
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1 when plaintiff's treating physician revoked any further refills of his Narco prescription, it was  
2 legally prevented from fulfilling his numerous requests for a refill. The Court agrees. Refusing  
3 to dispense controlled substances under circumstances which would violate the law does not  
4 constitute medical negligence as governed by RCW 7.70. Similarly, the refusal to dispense  
5 controlled substances when not authorized by prescription or the patient's doctor does not  
6 violate either the Americans with Disabilities Act or the Washington Law Against  
7 Discrimination, RCW 49.60. Finally, because Safeway Pharmacy is not a "state actor," the Civil  
8 Rights Act, 42 U.S.C. § 1983, does not allow for a cause of action against it.

9 Plaintiff has completely failed to oppose these legal arguments. This District's local rules  
10 state that "[i]f a party fails to file papers in opposition to a motion, such failure may be  
11 considered by the court as an admission that the motion has merit." Local Rule CR 7(b)(2).  
12 Furthermore, plaintiff's attempt to raise a genuine issue of material fact is misguided. Plaintiff  
13 apparently does not believe that pharmacy personnel contacted his "doctor", because his  
14 prescribing-physician left Auburn Community Health Center between the time she wrote the  
15 prescription and the time plaintiff attempted to have the prescription refilled, and therefore,  
16 plaintiff reasons that his "doctor" could not have cancelled the prescription. However, as  
17 defendant Safeway Pharmacy points out, plaintiff ignores the fact that the person who originally  
18 prescribed the medication was a physician's assistant, only authorized to prescribe medicine  
19 under the supervision of a licensed physician. That licensed physician is a member of Auburn  
20 Community Health Center, and it was such licensed physician that advised Safeway Pharmacy to  
21 cancel any further refills, as evidenced by the copies of facsimiles submitted with defendant's  
22 Reply. Accordingly, plaintiff has failed to raise any issue of genuine material fact, and summary  
23 judgment in favor of defendant Safeway Pharmacy is appropriate.

24 In addition, because plaintiff has failed to show any proof of service of the summons and  
25 complaint on the other defendants named in this action, even after being alerted to that failure by  
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1 defendant Safeway Pharmacy, the Court dismisses his claims against Auburn Community Health  
2 Center, Ms. Suzanne Laurel, D.O., and Ms. Debby Roberts for failure to prosecute. This case is  
3 DISMISSED with prejudice and the action is now CLOSED.

4 (2) The Clerk is directed to forward a copy of this Order plaintiff and to all counsel of  
5 record.

6 DATED this 4th day of January, 2006.

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10 RICARDO S. MARTINEZ  
11 UNITED STATES DISTRICT JUDGE  
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